Supreme Court, U. S.
FILED
MAR 17 1978
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-575

SMITH JOHN AND HARRY SMITH JOHN, APPELLANTS

v.

STATE OF MISSISSIPPI

No. 77-836

UNITED STATES OF AMERICA, PETITIONER

v.

SMITH JOHN AND HARRY SMITH JOHN

ON APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The appeal in No. 77-575 was docketed October 18, 1977
The petition for certiorari in No. 77-836 was filed December 10, 1977

Certiorari was granted in No. 77-836 and jurisdiction over the appeal was postponed in No. 77-575 on January 16, 1978

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No. 77-575

SMITH JOHN AND HARRY SMITH JOHN

v.

MISSISSIPPI

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No. 77-836

UNITED STATES OF AMERICA

v.

SMITH JOHN AND HARRY SMITH JOHN

Docket entries of the United States District Court, Southern District of Mississippi, Jackson Division	5A
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Docket entries, *State of Mississippi* v. *Smith John and Harry Smith John*, Leake County Circuit Court, No. 76–99, April Term 1976:

	Date
Indictment	April 28, 1976.
Motion to dismiss on grounds of lack of jurisdiction	April 29, 1976.[1]
Motion to dismiss on grounds of double jeopardy	April 29, 1976.[1]
Motion for change of venue	April 29, 1976.
Motion for change of venue argued and denied	May 6, 1976.
Motions to dismiss for lack of jurisdiction and double jeopardy argued and denied	May 6, 1976.
Trial	May 7, 1976.
Verdict	May 7, 1976.

[1] Joint motion.

Docket Entries

Case No. 49,682, *Smith John & Harry John* v. *State*, Supreme Court of Mississippi:

	Date
Notice of Appeal to Reporter	August 13, 1976.
Abstract of Record—Edwin R. Smith	October 20, 1976.
Brief of Appellant	October 20, 1976.
Brief for Appellee—Catherine Walker	November 16, 1976.
Reply Brief of Appellant—Edwin R. Smith	November 29, 1976.
Argued and Sub	April 27, 1977.
Opinions	May 11, 1977.
Petition for Rehearing Edwin R. Smith	May 26, 1977.
Petition for Rehearing Denied	July 20, 1977.
Mandate Issued	July 21, 1977.

	Date
Motion for Bail or Release Pending Filing for Petition for Writ of Cert. Edwin R. Smith.....	.....
Response to Motion for Bail Catherine Walker Underwood.....	July 22, 1977.
Motion for Bail or Release Pending Filing of a Petition for Writ of Certiorari Sustained upon the Filing and Approval of Bail Bond in the sum of $1,000 each..	July 27, 1977.
Appearance Bond for Smith John filed	July 29, 1977.
Appearance Bond for Harry John filed	July 29, 1977.

In the Supreme Court of Mississippi

No. 49,682

Wednesday, July 20, 1977, Court Sitting

SMITH JOHN AND HARRY JOHN

v.

STATE OF MISSISSIPPI

This cause this day came on to be heard on Petition for Rehearing filed herein and this Court having sufficiently examined and considered the same En Banc and being of the opinion that the same should be denied doth order that said Petition be and the same is hereby denied. Gillespie, C. J., and Lee, J., took no part.

Supreme Court of the United States

No. 77-575

SMITH JOHN AND HARRY SMITH JOHN, APPELLANTS

v.

MISSISSIPPI

ORDER

APPEAL from the Supreme Court of Mississippi.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of case on the merits. The case is consolidated with No. 77-836 and a total of one hour is allotted for oral argument.

January 16, 1978.

ATTORNEYS

Robert E. Hauberg
U. S. Attorney

Ed Smith
P. O. Box 467
Philadelphia, Ms. 39350

II. KEY INTERVALS & DATES

ARREST | INDICTMENT X | ARRAIGNMENT | TRIAL

Information 10-7-75 | 10 24 75 | Trial Set For | Vow Dire | Disposition

Waived | 1st Plea 10 24 75 | X Not Guilty | Trial Began 12 08 75 | X Convicted

Final Plea 10 24 75 | Trial Ended 12 09 75

III. MAGISTRATE

		DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Search Warrant	Issued					
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING	Date Scheduled	
Summons	Issued				Date Held	
	Served			Waived		Held for District GJ
Arrest Warrant				Not Waived	Intervening Indictment	Held to Answer to U. S. Dist.
COMPLAINT				Tape No.	INITIAL/No.	
OFFENSE (As Complaint)						Magistrate's Initials

* Show last names and suffix numbers of other defendants on same indictment/information

JOHN 1

IV. MAGISTRATE & DISTRICT COURT DOCKET ENTRIES

DATE	PROCEEDINGS
10-7-75	Indictment, filed.
10-7-75	Praecipe for Warrant, filed.
10-8-75	Warrant for Arrest, original and one copy, copy having attached certified copy of Indictment, issued and handed U. S. Marshal.
10-24-75	Plea of NOT GUILTY entered.
10-29-75	Copy of CJA 20 form appointing Edwin R. Smith attorney for deft., fld.
11-5-75	Magistrate's Record of Proceedings and complaint, filed.
11-14-75	Marshal's returns on subpoenas to testify, executed as to Larry Cooper, Billy Joe Brown, A. B. Chamblee, W. Marsett Townsend and Artis Jenkins, filed.
12/02/75	Marshal's return on subpoena to testify executed as to Dr. W. Douglas Godfrey on 12/01/75, filed.
12/09/75	Marshal's return on subpoena to testify executed as to Mrs. Artis Jenkins on 12/06/75, filed.
12/09/75	EXHIBITS: Govt. 1 and Govt. 2, filed.
12/09/75	JURY VERDICT: "We, the Jury, find the Defendant (Harry Smith John) to be Guilty of Simple Assault," filed.

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) – "SPEEDY TRIAL ACT".

75-68(C)

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE (a)	(b)
12/09/75	Order for Marshal to provide meals for jurors, filed and entered OB 1975, Pg. 2424.		
12-15-75	(SMITH JOHN) Motion of deft. for Judgment of Acquittal, with cert. of service, filed.		
12/12/75	Marshal's return on subpoenas to testify executed as to Choice Collier, Boyd Willis, Russell Willis and Maggie Allen, filed.		
12-15-75	JUDGMENT & COMMITMENT: Deft. convicted of offense of simple assault, which is a lesser offense than that charged in the indictment. Sent.: Impr. 90 days and pa, fine in sum of $300.00; deft. be conf. until pmt. of fine, entered CJB #10, page 71.		
12-15-75	J.S. 3 Card.		
12-16-75	Judgment & Commitment Distribution: Original & 1 copy to CLERK, 3 copies to USM, 1 copies to CSIPO, remaining copies to U.S.ATTORNEY.		
12-18-75	Motion of defts. to arrest judgment, with cert. of service, filed.		
12-18-75	Notice of above motion for hearing on 12-19-75, with cert. of service, filed.		
01/13/76	Marshal's return on judgment & commitment executed by delivering deft. to Madison County Jail at Canton, Miss. on 01/09/76, filed		
2-10-76	ORDER: Motion of defts. in Arrest of Judgment is without merit and relief sought denied, filed and entered OB 1976, page 367 (copy mailed U. S. Attorney and atty. for defts., Ed Smith)		
2-18-76	Deft's /Notice of Appeal to Fifth Circuit from order denying deft's Motion to Arrest Judgment entered on 2-6-76, filed. (copy mailed U. S. Attorney)		
2-27-76	Defts' Description of Parts of Transcript to be included in Record and Statement of Issues, with cert. of service, filed.		
3-11-76	CERTIFICATE AND ORDER: defts. having served their sentence of 90 days and in addition been detained an add'l 30 days pending payment of a fine, this Court has conducted a hearing in accordance with Section 3569, Title 18, U.S.C. and finds and certifies that said defts are indigents and should be discharged this date, filed and entered OB 1976, page 508 (copy mailed attorneys) (two copies handed U. S. Marshal)		
4-1-76	AGREED STATEMENT OF FACTS ON APPEAL approved by Judge Harold Cox, filed. (Original forwarded Fifth Circuit)		
11-3-77	Certified copy of Opinion of Fifth Circuit: Reversed and remanded, filed.		
11-3-77	Certified copy of Judgment of Fifth Circuit: Reversed and remanded in accordance with opinion of this Court, issued as Mandate 11-2-77, filed and entered OB 1977, page 2449 (copy handed C. Bond for Judge Cox)		
11-3-77	J.S. 2 - Reopened.		
1-24-78	Pursuant to telephone request, record on appeal returned to Fifth Circuit for certification to U.S. Supreme Court on writ of certiorari.		

Prelim. & Mag. Judge / Trial Judge: 538 / 3 / 3802 / 3802 — U. S. vs. JOHN, Smith — 07 10 75 — 75-68-1

CHARGES — U. S. Code Section: 18: 1153 & 113(a) — Offenses: Crime on an Indian Reservation — Counts: 1

U. S. Attorney or Asst.: Robert E. Hauberg, U. S. Attorney

Defendant: Ed Smith, P. O. Box 467, Philadelphia, Ms. 39350

ARREST — INDICTMENT — ARRAIGNMENT — TRIAL — SENTENCE

Indictment: Information ☐ — 10-7-75 — Waived ☐ — Superseding Indict/Info ☐

Arraignment: 10 24 75 — 1st Plea 10 24 75 — Final Plea

Trial: Trial Set For — Not Guilty — Note — Not Guilty — Note — Guilty — Trial Began 12 08 75 — Trial Ended 12 09 75

Sentence: 12 15 — Disposition — Convicted — Acquitted — Dismissed

Search Warrant: Issued / Return — Summons: Issued / Served — Arrest Warrant — COMPLAINT — OFFENSE (as Complained)

INITIAL APPEARANCE — PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled / Date Held — Waived — Not Waived — Intervening Indictment — Tape No. — INITIAL/No.

OUTCOME: Dismissed — Held for District GJ — Held to Answer to U.S. District Court — BOND — AT:

Magistrate's Initials

• Show last names and suffix numbers of other defendants on same indictment/information: JOHN 2

DATE	PROCEEDINGS
10-7-75	Indictment, filed.
10-7-75	Praecipe for Warrant, filed.
10-8-75	Warrant for Arrest, original and one copy, copy having attached certified copy of Indictment, issued and handed U. S. Marshal.
10-24-75	Plea of NOT GUILTY entered.
10-29-75	Copy of CJA 20 form appointing Edwin N. Smith attorney for deft., fld.
11-5-75	Magistrate's Record of Proceedings and Complaint, filed
11-14-75	Marshal's returns on subpoenas to testify executed as to Larry Cooper, Billy Joe Brown, A. B. Chamblee, W. Marsett Townsend and Artis Jenkins, filed.
11-28-75	Marshal's returns on subpoenas to testify, executed as to Dr. L. M. Fulcher, Jr. and Stanton A. Jenkins, filed.
12/02/75	Marshal's returns on subpoenas to testify executed as to Dr. W. Douglas Godfrey on 12/01/75, filed.
12/09/75	Marshal's return on subpoena to testify executed as to Mrs. Artis Jenkins on 12/06/75, filed.
12/09/75	EXHIBITS. Govt. 1 and Govt. 2 filed.
12/09/75	Order for Marshal to provide meals for jurors, filed and entered OB 1975, Pg. 2424.

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELA (a)	(b)	(c)
12/09/75	JURY VERDICT: "We, the Jury, find the Defendant (Smith John) to be Guilty of Simple Assault," filed.			
12-15-75	Motion of deft. SMITH JOHN for Judgment of Acquittal, with cert. of service, filed.			
12/12/75	Marshal's return on subpoenas to testify executed as to Choice Collier, Boyd Willis, Russell Willis and Maggie Allen, filed.			
12-15-75	JUDGMENT & COMMITMENT: Deft. convicted of offense of simple assault, which is a lesser offense than that charged in the indictment. Sent.: Impr. 90 days and pay fine in sum of $300.00; deft. be conf. until pmt. of fine, entered CJB #10, page 70.			
12-16-75	Judgment & Commitment Distribution: Original & 1 copy to CLERK. 3 copies to USM, 1 copies to CUSPO, remaining copies to U.S.ATTORNEY.			
12-15-75	J.S. 3 Card.			
12-16-75	ORDER: motion of Smith John for judgment of acquittal is overruled and is denied, filed and entered OB 1975, page 2488 (copy handed U. S. Attorney, mailed Edwin R. Smith)			
12-18-75	Motion of defts. to arrest judgment, with cert. of service, filed.			
12-18-75	Notice of above motion for hearing on 12-19-75, with cert. of service, filed.			
01/13/76	Marshal's return on judgment & commitment executed by delivering deft. to Madison County Jail at Canton, Miss. on 01/09/76, filed			
2-10-76	ORDER: Motion of defts. in Arrest of Judgment is without merit and relief sought denied, filed and entered OB 1976, page 367 (copy mailed U. S. Attorney and atty. for defts., Ed Smith)			
2-18-76	Deft's Notice of Appeal to Fifth Circuit from order denying deft's Motion to Arrest Judgment entered on 2-6-76, filed. (copy mailed U. S. Attorney)			
2-27-76	Defts' Description of Parts of Transcript to be included in Record and Statement of Issues, with cert. of service, filed.			
3-11-76	CERTIFICATE AND ORDER: defts. having served their sentence of 90 days and in addition been detained an add'l 30 days pending payment of a fine, this Court has conducted a hearing in accordance with Section 3569, Title 18, U.S.C. and finds and certifies that said defts are indigents and should be discharged this date, filed and entered OB 1976, page 588 (copy mailed attorneys) (two copies handed U. S. Marshal)			
4-1-76	AGREED STATEMENT OF FACTS ON APPEAL approved by Judge Harold Cox, filed. (Original forwarded Fifth Circuit)			
11-3-77	Certified copy of Opinion of Fifth Circuit: Reversed and remanded, filed.			
11-3-77	Certified copy of Judgment of Fifth Circuit: Reversed and remanded in accordance with opinion of this Court, issued as Mandate 11-2-77, filed and entered OB 1977, page 2449 (copy handed C. Bond for Judge Cox)			

(a) Interval (see Section II) (b) Appl Date / End Date (c) Ltr Code

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs JOHN, SMITH

J75-00068-01(C)
Yr. | Docket No. | D

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DEL/ (a)	(b)	(c)
11-3-77	J.S. 2 - Reopened.			
1-24-78	Pursuant to telephone request, record on appeal returned to Fifth Circuit for certification to U.S. Supreme Court on writ of certiorari.			

AO 257

Interval | Start Date | Lt

2/7/75

SUBJECT	CROSS APPEAL NO.	CASE NUMBER
X		76-1518

CIRCUIT S APPEAL ___ FROM Southern DISTRICT OF Mississippi AT Jackson

DATE DOCKETED 2/26/76 $50 FEE PAID ---------- JUDGE William Harold Cox

DATE NOTICE OF APPEAL FILED 2/18/76

D.C. DOCKET NUMBER J-75-68(C)-CR

3

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SMITH JOHN and HARRY SMITH JOHN,

Defendants-Appellants.

IN FORMA PAUPERIS

APPEARANCE FILED-DATE	CODE	ATTORNEYS FOR APPELLANT	ARG
2/26/76 ORDER		Edwin B.Smith, P.O. Box 4567, Philadelphia, Mississippi 39350 (Court-Apptd.) (601-656-7867)	

CLOSED

APPEARANCE FILED-DATE	CODE	ATTORNEYS FOR APPELLEE	ARG
3/5/76	X	Robert E. Hauberg, U.S. Atty., P.O. box 2091, Jackson, Mississippi	
3/5/76		Daniel E. Lynn, AUSA -do- (490-4480)	
8-30-76		Larry G. Gutterridge, Dept. of Justice, 9th & Penna Ave., N.W., Washington, D.C. 20530	
8-30-76	X	Peter R. Taft, Asst.Atty. Gen., - do -	
8-30-76	X	Edmund B. Clark, Atty., - do -	

TITLE: U.S.A. -vs- SMITH JOHN and HARRY SMITH JOHN NO. 76-1518

RECORD, EXHIBITS AND BRIEF INFORMATION

Filing	
	Partial Record or Ord. List
3-24-76	Record on Appeal — No. of Vols 1
4-9-76	Supp. Record — No. of Vols 1
	Second Supp. Record — No. of Vols
3-29-76	Exhibits
5-14-76	Appendix
	Former Appeal Record
	Administrative Transcript
	Briefing Notice Issd.
7-14-76	Brief for Appellant
	Brief for Appellant
	Brief for Cr. Appellee
8-26-76	Brief for Appellee (7) 4 copies
	Brief for Appellee
	Brief for Cr. Appellee
9-9-76	Reply Brief for Appellant
9-13-76	Supp. Brief for Appellant
9-22-76	Supp. Brief for Appellee
	Brief for Amicus
	Intervenor
	Rule 11(e) Certificate
10-6-76	ORDER ENV. AP EXHIBITS
10-6-76	ORD REC OF EXHIBITS
10-14-76	

MISCELLANEOUS FILINGS

Filing	
2/26/76	Dup. Notice of Appeal and Clerk's Statement of Docket Entries
	Papers Trans. from Misc. No.
	Order of DC Ext. Time to File Record to
	Order of DC Granting Appeal IFP
2/26/76	Order of DC Appointing Counsel
	Affidavit of Financial Status
2/26/76	CJA 20 Voucher Rec'd 11-17-77 (Supp)
	Notice of Election Rule 23(c)
	Appellant's Designation
	Appellee's Designation
	Designation
	Order to Show Cause
	Lower Rule 59(e) Dismissal Order
	CJA 21 for Transcript

AGENCY REVIEW CAPTION

Filing	
	Petition for Review of Order/ Enf. of ☐ NLRB ☐ FMC ☐
	Application for Enforcement – NLRB
	Answer to Application for Enforcement
	Cross Application for Enforcement

4. EXTENSION Flg. Motion for:

Order Filed	Ext. to:
	Record Trans.
	Appendix
	Appellant's Brief
	Appellant's Brief
	Appellant's Brief
	Appellee's Brief
	Appellee's Brief
	Appellee's Brief
	Reply Brief

5. CALENDAR INFORMATION

Rule 18 Notice Issued

12-3-76 Case Assigned for 10-4-76 ☐ SS ☐ W ☐ E Jackson

Case Cons'd for Reassignment

Case Reassigned for ☐ SS ☐ W ☐ E ☐

Hearing Panel JPC - JCG - JCW

10-7-76 Case Argued SS Appellant SS Appellee

Case Sub. w/o Arg. ☐ by Appellant ☐ by Appellee

6. OPINION INFORMATION

10-11-77 Opinion Rendered

Affirmed

Rev. in Pt.

Vacated P.C. Concl. Spec.

Dismissed Signed Rh.

Rule 21 Dis. in Pt.

Opinion Withdrawn

7. REHEARING INFORMATION

Mot. for Ext. – Ext. to

Mot. for Ext. – Ext. to

Petition for Rehearing

☐ Appellant ☐ Appellee ☐ Reg. ☐ En Banc

Petition for Rehearing

☐ Appellant ☐ Appellee ☐ Reg. ☐ En Banc

Response of

Order Denying Rehearing

Dissenting

☐ Opinion

☐ Order on Petition for Rehearing

76-1518

8. MOTIONS

Filing Motion to or for	Response Filed By	Date	Granted	Denied	By Court Clerk	Date
Mandamus						
Docket Appeal Out of Time						
Reinstate Appeal						
Stay Further Proceedings in CA						
Stay Pending Appeal						
Injunction Pending Appeal						
Consolidate Appeals						
Leave to Appeal IFP						
Bail Pending Appeal						
Withdraw as Counsel						
Appointment of Counsel						
Leave to File Supp. Record						
Hearing on Original Record						
Hearing on Orig. Rec. & Typed Brief						
Leave to File Typed Brief						
Leave to File Brief in Excess Pgs.						
Dismiss by Appellant						
Dismiss by Appellee						
Amicus Curiae						
Leave to File Supp. Brief						
Stay of Mandate						
Recall of Mandate						

9. OTHER DOCKET ENTRIES

9/29/76	Flg. appellee's letter dtd. 9/28/76 responding to Ct.'s recent request that record be supplemented, with copy of Proclamation of Secretary of Interior attached. C.E.
2-2-77	Flg. Response of Appellee's to Court's Request concerning the Solitor General filing a Petition for Cert. in Case No. 73-3014. (C.E.)
4/8/77	Flg. letter of Appellee dated 4/5/77. (CE)
7/5/77	Flg. letter of appellee dtd. 6/23/77 calling Court's attention to similar cases, with attached opinions. (CE)

CODE TO ENTRIES

ARG – Argued
CE – Clerk's Exhibit(s)
E – Exit Courtroom
ES – En Banc Courtroom
F – Filed
H – Handwritten
J – Sent to Judge
L – Large
M – Memo or Offset
P – Printed
PT – Preliminary Type
S – Small
SS – See Section 9
Sub – Submitted
T – Typed
W – Week (s) Wages

10. JUDGMENT OR MANDATE INFORMATION

	Bill of Costs
	Flg. & Ent'g. Judgment
NOV 2 1977	Mtng. Copies of Jdgt. to Bill & Cnsl.
	Jdgt. or Mdt. Rec'd. to Clerk
	Jdgt. or Mdt. Recalled to Clerk
	Dismissal Mdt. to Clerk
NOV 2 1977	Record on Appeal Rec'd to Ct. (supp) (Volume Rec'd to Ct. 1 and 1 Suppl.) Record on Appeal left to Clerk
2-2-78	Exhibit left to Clerk in envelope
	Mandate Stayed to

11. SUPREME COURT INFORMATION No. 77-836

2-2-78	Preparing Proceedings for Printing: Flg. Appellee's Letter
	Preparing Subst. Proceedings on Cert.
	Transmitting Orig. Exhibits to S.C.
11-3-77	Order of S.C. – Ent. re: 12-14-77
12-16-77	Notice of Flg. of Cert. Pet. on: 12-19-77
1-20-78	Order of S.C. ☐ Denied ☒ Granted 1-16-78
	Notice of Stance of Pet. for Rehearing.
	Opinion of S.C. dated
	Judgment of S.C.

IN THE SUPREME COURT OF THE UNITED STATES

No. 77-836

UNITED STATES, PETITIONER

v.

SMITH JOHN AND HARRY SMITH JOHN

Order Allowing Certiorari

Filed January 16, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with No. 77-575 and a total of one hour is allotted for oral argument.

(13A)

U.S. GOVERNMENT PRINTING OFFICE: 1978